

Whether claimant is entitled to penalties pursuant to K.S.A. 44-512a due to the respondent's delayed payment of medical mileage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

- (1) That penalties pursuant to K.S.A. 44-512a are not applicable.

On December 20, 1993, the attorney for the claimant provided to the attorney for the respondent and to Miss Dawn Short of Crawford & Company a demand for mileage payments for certain trips by the claimant to authorized treating physicians. The certified letter required payment "within 28 days of receipt hereof."

The representative of Crawford & Company, in following the instructions of the claimant's letter, paid the mileage on the twenty-eighth (28th) day of receipt of the letter.

K.S.A. 44-512a imposes civil penalties when an employer or its insurance carrier fail to pay compensation to a workers compensation claimant when due. While the language of K.S.A. 44-512a specifically speaks of twenty (20) days as being the time limit in question, the letter presented to both the respondent's attorney and to the insurance carrier by the claimant's attorney specified twenty-eight (28) days as the time frame for payment. The specific language of K.S.A. 44-512a(a) speaks of compensation awarded under the workers compensation act "not paid when due." In this instance, the attorney for the claimant designated the time frame within which payment was to be made, i.e. twenty-eight (28) days. To demand payment within twenty-eight (28) days by certified letter and then attempt to enforce the provisions of K.S.A. 44-512a in allowing penalties due to the respondent not having paid within twenty (20) days would be unfair. As such the Appeals Board finds penalties are not appropriate in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant has failed in his burden of proving entitlement to penalties under K.S.A. 44-512a and the Order of Administrative Law Judge George R. Robertson dated March 14, 1994, denying penalties to claimant is affirmed on other grounds.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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George R. Robertson, Administrative Law Judge
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